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Hearing Date: December 5, 2008 at 10:00 am
Objection Deadline: December 3, 2008 at 5:00 p.m.

and

KUTAK ROCK LLP
Michael A. Condyles (Va. Bar No. 27807)
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Counsel for Shopping.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DIVISION OF VIRGINIA
RICHMOND DIVISION

In re:

Circuit City Stores, Inc.,
et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**MOTION TO FILE CERTAIN DOCUMENTS UNDER SEAL AND
NOTICE OF MOTION AND NOTICE OF HEARING**

Shopping.com, Inc., a subsidiary of the eBay Inc. ("Shopping.com"), by and through its undersigned counsel, respectively submits this motion (the "Motion") for entry of an order pursuant to section 107(b)(1) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure authorizing Shopping.com to file certain documents under seal. In support of this Motion, Shopping.com respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b).

Background

4. On November 10, 2008, (the “Petition Date”) Circuit City, Inc., as debtor and debtor-in-possession herein (the “Debtor”) filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

6. No trustee or examiner has been appointed in these Chapter 11 cases and no committees have yet been appointed or designated.

7. Shopping.com provides online comparison shopping to consumers by making available to them a comprehensive set of products from thousands of stores across the internet. Shopping.com allows merchants to list their products for sale on Shopping.com. On May 14, 2003, Deal Time, Inc.¹ and the Debtors entered into a “Terms and Conditions of Merchant Participation” agreement (“Merchant Participation Agreement”) by which Shopping.com agreed to provide services to the Debtor. The terms of the Merchant Participation Agreement are confidential and include proprietary information.

8. Shopping.com is filing a motion contemporaneously herewith seeking entry of an order pursuant to §§ 105, 361, 362, 363, 364 and 365 of the Bankruptcy Code for (1) Adequate Assurance of Payment, (2) Confirmation that All Post-Petition Services provided to the Debtors by Shopping.com Shall be Treated as Allowed Administrative Claims or, Alternatively (3) in

¹ In 2004, Deal Time, Inc. was merged into Shopping.com, which was acquired by eBay in 2005.

Failing to provide Such Relief, Granting Shopping.com Immediate Relief from Stay to Cease Providing Any Services to Debtors (the “Assurance Motion”).

Legal Analysis

9. The Court is authorized to issue orders to protect entities from potential harm caused by the disclosure of confidential information under § 107(b) of the Bankruptcy Code, which provides that the court may “protect an entity with respect to a trade secret or confidential research, development or commercial information.”

10. Similarly, Rule 9018 of the Federal Rules of Bankruptcy provides that a court may issue an order to protect “any entity in respect of a trade secret or other confidential research, development or commercial information . . .”

11. Under 107(b), “[t]he court determines whether the subject documents falls within the provisions of § 107(b) and the appropriate protective remedy if they do.” *In re Barney’s, Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996) *citing In re Phar-Mor, Inc.*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). If the documents fall within one of the exceptions of § 107(b), the bankruptcy court *shall* offer protection. *See In re Food Mgmt.*, 359 B.R. 543, 554 (Bankr. S.D.N.Y. 2007). To that end, the courts have held that if the document qualifies for an exception, “protection is required rather than simply left to the discretion of the bankruptcy court.” *Id.*

12. The courts have defined commercial information as information which would cause “an unfair advantage to competitors by providing them information as to the commercial operations [of a business].” *In re Orion Pictures Corp.*, 21 F.3d 24 (2nd Cir. 1994). The courts do not, however, require that the commercial information rise to the level of “trade secrets.” *See Id.* at 28.

13. The Merchant Participation Agreement contains confidential and proprietary information regarding Shopping.com's business model and public disclosure of such information would allow other competitors to obtain an unfair advantage.

14. Due to the commercial nature of the Merchant Participation Agreement, Shopping.com respectfully submits that this document qualifies for a § 107(b) exception and as such, the relief requested should be granted. No alternative method would adequately protect the confidential and proprietary business information contained in the Merchant Participation Agreement.

15. A copy of the Merchant Participation Agreement has been provided to the Debtor's co-counsel and the Debtor itself. Shopping.com will deliver a copy of the Merchant Participation Agreement to chambers for in camera review by the Court and to the Office of the United States Trustee for the Eastern District of Virginia.

Waiver of Memorandum of Law

16. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth herein, Shopping.com requests that the requirement that all motions be accompanied by a separate memorandum of law be waived.

WHEREFORE, Shopping.com respectfully requests that this Court enter an Order (A) authorizing Shopping.com to file the confidential Merchant Participation Agreement under seal; and (B) granting such other information and further relief as this Court deems appropriate.

NOTICE OF MOTION AND NOTICE OF HEARING

PLEASE TAKE NOTICE THAT Shopping.com, Inc. has filed the above Motion in this case. *Your rights may be affected.* You should read these papers carefully and discuss them

with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the Court to grant the relief sought in the motion, or if you want the Court to consider your views, then on or before two (2) business days before the hearing referenced below that has been scheduled on the motion, you or your attorney must:

1. File with the Court, at the address shown below, a written response. If you mail your response to the court for filing, you must mail it early enough so that the court will receive it on or before the date stated above.

2. Your mailing should be directed to:

Clerk of the Court
United States Bankruptcy Court
701 E. Broad Street
Suite 4000
Richmond, VA 23219

3. You must also mail a copy to:

Michael A. Condyles, Esq.
Kutak Rock, LLP
1111 East Main Street, Suite 800
Richmond, VA 23219

Robert B. Van Arsdale, Trustee
Office of the U. S. Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219

4. You must also attend the hearing to consider the relief sought in addition to filing a written objection. If you fail to file timely a written response and to attend the hearing, the Court may consider any objection you may have waived and enter an Order granting the relief

requested. The hearing is scheduled for **December 5, 2008 at 10:00 a.m.**, at the United States Bankruptcy Court, 701 E. Broad Street, Courtroom 5000, Richmond, VA 23219.

SHOPPING.COM

By: /s/ Michael A. Condyles
Counsel

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Counsel for Shopping.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on November 25, 2008, I caused to be served a copy of the foregoing by ECF notification and/or first-class mail postage prepaid to the following:

SEE ATTACHED LIST

/s/ Michael A. Condyles

Circuit City Stores, Inc.
Core Group Service List

NAME	ATTENTION	ADDRESS1	ADDRESS2	ADDRESS3	CITY	STATE	ZIP	COUNTRY	PHONE	FAX	Email	Party/Function
CIRCUIT CITY STORES, LLC	REGINALD D. HEDGECOCK STATE CORPORATION COMMISSION	9950 MAYLAND DRIVE			RICHMOND	VA	23233		804-486-4000	804-527-4164		Debtor
COMMONWEALTH OF VIRGINIA CORPORATE SALES AND USE EMPLOYER WITHHOLDING, AND LITTER TAX DEPARTMENT OF JUSTICE CIVIL DIVISION		TYLER BUILDING	1300 E. MAIN STREET		RICHMOND	VA	23219		804-371-9987	804-371-9734		Government Agency
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ENVIRONMENTAL PROTECTION AGENCY	ATTN: DIRECTOR	1650 ARCH STREET 1200 PENNSYLVANIA AVENUE NW	SUITE 4209 1300 PENNSYLVANIA AVENUE, N.W.		WASHINGTON	DC	20044		202-514-7164	202-307-0494		Government Agency
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SECRETARY OF TREASURY SECURITIES & EXCHANGE COMMISSION SECURITIES & EXCHANGE COMMISSION	ATTN: BANKRUPTCY UNIT NATHAN FUCHS, ESQ. PATRICIA SCHRAGE, ESQ.	15TH & PENNSYLVANIA AVENUE, N.W. NEW YORK OFFICE	BRANCH/REORGANIZATI ON		WASHINGTON WASHINGTON NEW YORK	DC DC NY	20020 20020 10279		202-622-2000 202-942-0900 646-428-1883	202-622-6415 202-942-9625 646-428-1883		Government Agency Government Agency Government Agency
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